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Regulations on nominee registration in securities funds' unit holder registers

Laid down by the Ministry of Finance on 18 December 2003 pursuant to the Securities Funds Act (No. 52 of 12 June 1981) section 6-4 fourth paragraph, cf delegation decision no. 720 of 5 July 2002. Amended by Regulations no 649 of 19 June 2006.

Section 1 Definitions

In these regulations

Unit holder register means the list of a securities fund's unit holders which the Securities Fund's Act section 6-4 requires to be maintained by the securities fund's management company or by the party to which the management company, with Finanstilsynet's consent, entrusts the maintenance of such register.

Nominee means the party that is registered in the unit holder register in the place of the unit holder and which deals with the management company on the unit holder's behalf.

Principal means the party who commissions the nominee to appear in the unit holder register as the custodian of securities fund units.

Management company means a company engaged in securities fund management, cf. the Securities Funds Act section 1-2 no. 2.

Public authority means a Norwegian public authority.

Section 2 Right to register in the name of a nominee

A nominee authorised under section 3 may be entered into the unit holder register in the place of the beneficial owner of the unit(s).

Upon being entered into the unit holder register, a nominee is duty bound to inform the registrar that the entity is a nominee, and it must be clear from an endorsement in the register that the entity is a nominee.

Section 3 Authorisation of nominees

A Norwegian or foreign bank, securities firm, securities register or management company that is subject to public supervision in its home country may upon application to Finanstilsynet be authorised to appear as a nominee in a unit holder register. Investment firms must be licensed to accept and effect orders on behalf of investors and/or to engage in active management of investors' portfolios of financial instruments in order to be authorised as a nominee. A management company may only accept nominee assignments to the extent that such assignments are related to the management of securities funds or to an individual portfolio.

Applications from foreign applicants for authorisation as nominees shall be accompanied by:

a declaration from the home country's supervisory authority showing that the applicant is a licensed bank, investment firm, securities register or management company and is subject to supervision by the authority concerned, and

a declaration from the home country's supervisory authority or from a lawyer practising in the jurisdiction in question confirming that under the home country's legislation there is nothing to prevent the nominee from undertaking to provide information that may be required under these regulations.

Applicants from countries outside the EEA must in addition provide documentation showing that their home country has implemented money laundering rules that are in line with the EEA rules on money laundering.

Declarations issued in a language other than a Scandinavian language or English must be accompanied by authorised translations into Norwegian or English.

Finanstilsynet may impose further conditions for authorisation of foreign nominees.

Section 4 Nominee's duty to register information on the unit holder etc.

The nominee shall maintain a list of the unit holders for whom the entity acts as nominee. The nominee shall record information as required by Regulations no. 1779 of 22 December 2003 on delivery of checking statements from management companies and the Norwegian Central Securities Depository to the tax authorities sections 3 and 4. The nominee shall also record information as mentioned in the Act on Measures to Combat the Laundering of Proceeds of Crime etc. (No. 41 of 20 June 2003) section 6 and appurtenant regulations.

The nominee shall ascertain whether the principal is the beneficial owner of the unit(s). If the principal is also a nominee, the nominee shall be duty bound to ascertain the identity of the beneficial owner and to record such information about the beneficial owner as is mentioned in the first paragraph. If the nominee fails to obtain information on the identity of the beneficial owner of the unit(s), the nominee may not accept the nominee assignment.

The nominee shall retain all information on the nominee assignment and principals, including an overview of changes in the principals' portfolios of nominee-registered units, for a period of ten years.

Section 5 Nominee's disclosure obligation

The Securities Register Act section 8-2 subsections 1, 2, 3 and 5 applies correspondingly to the nominee's obligation to hand over information recorded under section 4. Where a public authority is entitled by law to information from the management company, the authority concerned is entitled to receive this information from the nominee in respect of the unit holders for whom the entity acts as custodian.

The nominee shall in respect of the unit holders for whom the entity acts as custodian provide, of his own accord, statements as mentioned in Regulations no. 1779 of 13 December 1995 sections 3 and 4 to the management company. The management company shall pass on the statements to the Tax Directorate.

The nominee's duties stated in section 5, subsection 2, cf section 4, subsection 1, second sentence, do not apply for unit holders for whom the nominee is a nominee but who are not liable to pay tax to Norway.

The obligation to disclose information remains in effect even if the nominee assignment has terminated or the nominee has relinquished or been deprived of his right to appear as nominee in the unit holder register.

A nominee who enters into an agreement on a nominee assignment is obliged to obtain the principal's prior permission for the nominee to furnish public authorities with such information as they require pursuant to these regulations. If the principal refuses to give such permission, the nominee shall be obliged to relinquish the assignment.

Section 6 Significance of nominee registration in relation to differentiated management fees

The nominee shall not be regarded as a single unit holder in relation to the right to differentiate the management fee.

If the nominee proves to the management company that one or more of the unit holders whom the nominee represents meet the requirements for a lower management fee, a differentiated management fee may be calculated for this part of the nominee's total portfolio of fund units.

Section 7 Violation of requirements under these regulations

Should any party be listed as a nominee without being authorised under section 3 or the authorisation is withdrawn, Finanstilsynet may issue an order to the management company or the securities register preventing the nominee from disposing over the units in his management or from being registered as the holder of further units. The same applies if the nominee has failed within a stipulated period to comply with an order to furnish information to public authorities or the management company. Transactions approved by Finanstilsynet may nonetheless be executed.

Finanstilsynet may withdraw permission to be listed as a nominee in a unit holder register if the nominee fails to fulfil such requirements or to comply with such obligations as are contained in or issued pursuant to these regulations.

Section 8 Entry into force and transitional rules

These regulations enter into force on 1 January 2004.

Until such time as the Act on Measures to Combat the Laundering of Proceeds of Crime etc. (No. 41 of 20 June 2003) enters into force, references to that Act shall be understood as references to the act on Financing Activity and Financial Institutions (No. 40 of 10 June 1988) section 2-17 and appurtenant regulations.